

**RECEIVED
CENTRAL FAX CENTER**

AUG 03 2005

OFFICIAL

CARDINAL LAW GROUP

1603 Orrington Avenue/Suite 2000
Evanston, Illinois 60201
Telephone 847 - 905 - 7111
Facsimile 847 - 905 - 7113

Date: AUGUST 3, 2005

To: EXAMINER DUC MINH NGUYEN
U.S. PATENT AND TRADEMARK OFFICE

Fax #: (571) 273-8300

From: FRANK C. NICHOLAS
Phone #: (847) 424-2521

Client/Matter No.: 7780/18 (T00349)

of Pages: 6

(including cover sheet)

IF YOU HAVE ANY PROBLEMS RECEIVING THIS MESSAGE, PLEASE CALL 847/905-7111, Ext. 112 AND ASK FOR JENNIFER CRUZ

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED. IT MAY CONTAIN PRIVILEGED, CONFIDENTIAL, ATTORNEY WORK PRODUCT, OR TRADE SECRET INFORMATION WHICH IS EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAWS. IF YOU ARE NOT THE INTENDED RECIPIENT, OR AN EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE (AND ALL COPIES) TO US BY MAIL AT THE ABOVE ADDRESS. WE WILL REIMBURSE YOU FOR POSTAGE

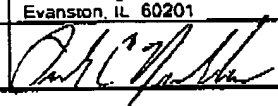

PTO/CB/21 (12/07) Approved for use through 03/01/00. OMB 0651-0031. Please and Trademark Office is U.S. DEPARTMENT OF COMMERCE. Under the Paper Reduction Act of 1996, this form is being revised to conform to a standard of information which is designed to reduce the number of pages required for filing.

<h1>TRANSMITTAL FORM</h1> <p>(to be used for all correspondence after initial filing)</p>	Attorney Docket No	7780/18 (T00349)
	Application Number	10/040,288
	Filing Date	OCTOBER 25, 2001
	First Named Inventor	ROBERT J. MENENDEZ
	Group Art Unit	2843
	Examiner	NGUYEN, DUC MINH

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Amendment <input type="checkbox"/> Alter Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Status Letter <input type="checkbox"/> Extension of Time Request (dupl.) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Supplemental Information Disclosure Statement, PTO-1449, an <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application	<input type="checkbox"/> Assignment Papers <input type="checkbox"/> Drawings <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Petition Raising Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> To Convert a Provisional Application <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request of Refund	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Reply Brief <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Post Card Receipt <input type="checkbox"/> Additional Enclosure(s) (please identify below). <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. 50-1713 (Cardinal Law Group). A duplicate copy of this sheet is enclosed.		
<input checked="" type="checkbox"/> I hereby petition under 37 CFR § 1.136(a) for any extension of time required to ensure that this paper is timely filed. Please charge any associated fees which have not otherwise been paid to Deposit Account No. 50-1713 (Cardinal Law Group). A duplicate copy of this sheet is enclosed.		

CALCULATION OF FEE

				Small Entity		or	Large Entity	
	Claims After Amendment		Highest No Previously Paid For	Present Extra	Rate	Add'l Fee	Rate	Add'l Fee
Total		Minus		0	x \$25=	0	x \$50=	
Indep.		Minus		0	x \$100=	0	x \$200=	
First Presentation of Multiple Dep. Claim					+ \$180=	---	+ \$360=	
					total add'l fee	\$ 0	total add'l fee	\$ 0

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	FRANK C. NICHOLAS Registration No. 33,983 CARDINAL LAW GROUP 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201		
Signature		Date	August 3, 2005
CERTIFICATE OF FACSIMILE			
I hereby certify that this correspondence is being transmitted via facsimile to (571) 273-8300 To the United States Patent and Trademark Office on this date:			August 3, 2005
Signature	 FRANK C. NICHOLAS (33,983)	Date:	August 3, 2005

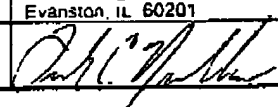
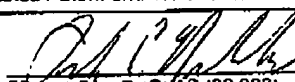
PTO Form 21 (11/2/77), approved for use through 8/30/00. One fee: US\$1. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paper Reduction Act of 1992, no fee shall be required to respond to a correction of information sheets & drawings & send ONE contact number

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Attorney Docket No	7780/18 (T00349)
	Application Number	10/040,288
	Filing Date	OCTOBER 25, 2001
	First Named Inventor	ROBERT J. MENENDEZ
	Group Art Unit	2643
	Examiner	NGUYEN, DUC MINH

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Amendment <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Status Letter <input type="checkbox"/> Extension of Time Request (dupl.) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Supplemental Information Disclosure Statement, PTO-1449, art. <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application	<input type="checkbox"/> Assignment Papers <input type="checkbox"/> Drawings <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Petition Routing Slip (PTO/SB/69) and Accompanying Petition <input type="checkbox"/> To Convert a Provisional Application <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request of Refund	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Reply Brief <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Post Card Receipt <input type="checkbox"/> Additional Enclosure(s) (please identify below). <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. <u>50-1713</u> (Cardinal Law Group). A duplicate copy of this sheet is enclosed.		
<input checked="" type="checkbox"/> I hereby petition under 37 CFR § 1.136(a) for any extension of time required to ensure that this paper is timely filed. Please charge any associated fees which have not otherwise been paid to Deposit Account No. <u>50-1713</u> (Cardinal Law Group). A duplicate copy of this sheet is enclosed.		

CALCULATION OF FEE

					Small Entity		or		Large Entity	
	Claims After Amendment		Highest No Previously Paid For	Present Extra	Rate	Add'l Fee		Rate	Add'l Fee	
Total		Minus		0	x \$25=	0		x \$50=		
Indep		Minus		0	x \$100=	0		x \$200=		
First Presentation of Multiple Dep. Claim					+ \$180=	—		+ \$360=		
					total add'l fee		\$ 0	total add'l fee		\$ 0

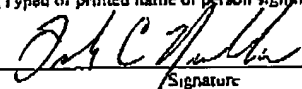
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	FRANK C. NICHOLAS Registration No. 33,983 CARDINAL LAW GROUP 1603 Orrington Avenue, Suite 2000 Evanston, IL 60201		
Signature		Date	August 3, 2005
CERTIFICATE OF FACSIMILE			
I hereby certify that this correspondence is being transmitted via facsimile to (571) 273-8300 To the United States Patent and Trademark Office on this date			
Signature		Date:	August 3, 2005

RECEIVED
CENTRAL FAX CENTER

AUG 03 2005

Certificate of Facsimile
I hereby certify that this correspondence is being transmitted
by facsimile to (571) 273-8300 to the United States Patent
and Trademark Office on August 3, 2005
(Date of Transmission)

FRANK C. NICHOLAS (11983)
(Typed or printed name of person signing certificate)


Signature

August 3, 2005
Date

PATENT-APPEAL
Case No. 7780/18 (T00349)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:

ROBERT J. MENENDEZ

Serial No.: 10/040,288

Filed: OCTOBER 25, 2001

Title: SYSTEM FOR MONITORING
A SERVICE VEHICLE

Examiner: NGUYEN, DUC MINH

Group Art Unit: 2643

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22202-1450

Sir,

This is a reply brief in response to the Examiner's June 3, 2005 answer on appeal.

August 3, 2005
Case No.: 7780/18 (T00349)
Serial No.: 10/040,288
Filed. October 25, 2001
Page 2 of 3

The Examiner's answer fails to address the flaw in his arguments. Indeed, although the Examiner appears to be arguing new grounds of rejection, no new rejections are asserted.

"In order to carry back the 35 U.S.C. 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the parent application must support the invention claimed as required by 35 U.S.C. 112, first paragraph. For if a parent could not theoretically have issued the day the application was filed, it is not entitled to be used against another as 'secret prior art' under 35 U.S.C. 102(e)." MPEP §2136.03 IV.

If any parent of Flick '946 could have been used as an anticipatory reference, the Examiner would have cited that reference instead. Since the Examiner cannot allege, and has not alleged, that Flick '946 could have issued on the date cited by the Examiner, Flick '946 cannot be cited as prior art in support of a §102(e) rejection.

The Examiner cites to the Flick '465 patent in his response. However, this application has never been rejected over the '465 reference. Appellant traverses the Examiner's argument that '465 "clearly" covers every limitation - if it was so clear, the Examiner would have cited '465 in support of a rejection. The '465 patent was *issued prior* to the '946 reference, and was available to the Examiner during his search and throughout the prosecution of this application. The Examiner did not even mention '465 as relevant to patentability in the Form 892.

The Examiner has continued to reject this application over Flick '946. Therefore, this rejection must fall. Furthermore, the Examiner is only allowed to raise a new ground of rejection in response to a new argument asserted by Appellant - since Appellant has not raised a new ground of rejection on appeal, the Examiner cannot assert a new ground of rejection in the Answer. *See*, 69 F.R. 155, 49963 (August 12, 2004).

Therefore, Flick '946 cannot support a rejection under §102(e).

August 3, 2005
Case No.. 7780/18 (T00349)
Serial No.: 10/040,288
Filed: October 25, 2001
Page 3 of 3

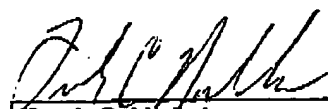
SUMMARY

The final rejection of claims 1-31 should be reversed.

Dated: August 3, 2005

Respectfully submitted,
ROBERT J. MENENDEZ

CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, Illinois 60201
Phone: (847) 905-7111
Fax: (847) 905-7113



Frank C. Nicholas
Registration No. 33,983
Attorney for Applicant